IT IS ORDERED as set forth below:

Date: February 5, 2013

James R. Sacca
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: NATHAN CHUKWUEMEKA OHUCHE, Debtor.	}	Case No.: 12-79379-JRS Chapter 13
FEDERAL NATIONAL MORTGAGE ASSOCIATION Movant, v. NATHAN CHUKWUEMEKA OHUCHE, and ADAM M. GOODMAN, AS TRUSTEE, Respondents.	}	CONTESTED MATTER Judge: James R. Sacca

ORDER

On November 30, 2012, Federal National Mortgage Association ("Fannie Mae") filed a Motion for Relief from the Automatic Stay (the "Motion") in order to proceed with a state court dispossessory proceeding relating to property located at 1074 Peachtree Walk NE, Unit B310,

Atlanta, Georgia (the "Property"). [Doc. 8]. The Debtor filed an objection to the Motion. [Doc. 28]. The Court heard arguments on the Motion from Fannie Mae's counsel and from Debtor, who appeared pro se. The Chapter 13 Trustee did not oppose the relief Fannie Mae sought.

Prior to Debtor filing this case, Debtor's lender—Bank of America, N.A.—foreclosed on the Property. Debtor contends the foreclosure was wrongful. According to Fannie Mae, Bank of America conducted a foreclosure sale and was the high bidder. Fannie Mae attached to the Motion a copy of a Deed Under Power indicating that Bank of America became the owner of the Property on October 5, 2010. Fannie Mae also attached to its Motion a Special Warranty Deed indicating that Bank of America transferred the Property to Fannie Mae that same day.

At the hearing on the Motion, Debtor acknowledged that Fannie Mae initiated pre-petition dispossessory proceedings against Debtor in state court seeking possession of the Property. Debtor also acknowledged that the Magistrate Court of Fulton County, Georgia ruled in favor of Fannie Mae following a hearing and entered a writ of possession. The Debtor appealed this judgment to the Superior Court of Fulton County, Georgia. Fannie Mae then filed a motion to compel Debtor to pay rent during the pendency of the appeal, pursuant to state law, in order to maintain possession. The Fulton Superior Court set the motion to compel rent payments on a hearing calendar. On November 29, 2012—the day before the hearing on the motion to compel payment of rent was scheduled to occur—Debtor filed this bankruptcy case.[1] Debtor also acknowledged that he has an action pending against Fannie Mae and others in the United States District Court, Northern District of Georgia. In this District Court case, Debtor seeks, among other things, an order enjoining the ongoing state court dispossessory action.

[1] Even if the Court were to deny the Motion, Debtor would be required to pay a mortgage payment every month. *See In re Thomas*, 1:11-CV-1608-WSD, 2011 WL 4404136 (N.D. Ga. Sept. 21, 2011) (affirming bankruptcy court's order requiring debtor to deposit his monthly mortgage payments with the Chapter 13 Trustee and dismissing debtor's case for failure to do so). There are no free rides on mortgage payments under Chapter 13.

Cause for Relief from Stay

Section 362(a)(1) of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay as to the commencement or continuation of judicial proceedings against the debtor. 11 U.S.C. § 362(a)(1). But the Bankruptcy Code also provides that the Court shall grant relief from this stay and terminate, annul, modify, or condition it under certain circumstances. 11 U.S.C. § 362(d). Particularly, the Court must grant stay relief "for cause." 11 U.S.C. § 362(d)(1). The Bankruptcy Code does not define "cause." One situation where cause exists to lift the automatic stay is where the debtor's estate holds no interest in the in the property at issue. *In re Haynes*, 07-10365-WHD, 2007 WL 7141218 at *1 (Bankr. N.D. Ga. Apr. 17, 2007). Under Georgia law, a debtor has no interest in property when the debtor's equity of redemption has been terminated by a foreclosure sale and executed deed prior to the debtor's bankruptcy case commencing. *Id.* at *2–3.

Because a debtor's estate holds no interest in property which has been transferred pursuant to a foreclosure sale and executed deed, this Court and other courts routinely modify the automatic stay to permit state court dispossessory proceedings to continue. *See, e.g., id.; In re Adams*, 05-97399, 2006 WL 6592051 (Bankr. N.D. Ga. Apr. 4, 2006). This case is no exception. The Magistrate Court of Fulton County Georgia has already determined that Fannie Mae has a right to possession of the Property following the foreclosure sale and executed deed. That court has issued a writ of possession, although Debtor has appealed that ruling. Debtor's appeal notwithstanding, the Magistrate Court has determined that Fannie Mae is entitled to possession. Therefore, cause exists to modify the automatic stay and allow Fannie Mae to continue litigating its dispossessory action in the state courts of Georgia, subject to any defenses the Debtor may have.

Debtor argued at the hearing that the automatic stay should not be lifted as to the Property until after the District Court issues its decision, but Debtor's own contentions in his response to the Motion work against that argument. In that document, he argues that this Court does not have jurisdiction to adjudicate this matter because of the case pending in the District Court [Doc. 28 at 1] and that "[t]his court will certainly not want to assume jurisdiction of any issue where subject matter jurisdiction is currently split between the Georgia Court of Appeals and the United States District Court." [Doc. 28 at 3]. Although this Court may disagree with Debtor on his conclusions about this Court's jurisdiction, it does not disagree with Debtor's conclusion that, under the facts of this case, it should not stay the litigation and adjudication of claims between Debtor and Fannie Mae in a non-bankruptcy forum.

Standing

Debtor also contends in his response to the Motion that Fannie Mae does not have standing to bring the Motion. He contends that this Court must delay its determination on the relief from stay motion until the question of Fannie Mae's standing reaches a final resolution in the state courts of Georgia.[2] Debtor confuses the issue of standing to foreclose or dispossess with the issue of standing to be granted relief from the automatic stay.

Standing is "the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Id.* In the context of a motion for relief from stay, § 362(d) of the

[2] If Debtor were correct, we would find ourselves in a "Catch-22" dilemma, where Fannie Mae could not proceed with the dispossessory action because of the automatic stay, and this Court could not grant relief from that stay until the dispossessory action proceeds. Obviously, such a legal limbo would not be in the interests of justice.

Bankruptcy Code provides that stay relief can only be granted "[o]n request of a party in interest and after notice and a hearing." 11 U.S.C. § 362(d). The Bankruptcy Code does not define who is a "party in interest" with standing to pursue stay relief. Courts in this District have followed the First Circuit's holding in *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26 (1st Cir. 1994), and concluded that, for purposes of § 362(d), a creditor who has a "colorable claim to property of the estate" is a party in interest with standing. *In re Richards*, 09-69716-WLH, 2012 WL 2357672 (Bankr. N.D. Ga. June 8, 2012); *In re Fontaine*, 10-98793, 2011 WL 1930620 (Bankr. N.D. Ga. Apr. 14, 2011).

In *Grella*, the First Circuit cited numerous cases and concluded that most courts have found that relief from stay hearings "do not involve a full adjudication on the merits of claims, defenses, or counterclaims, but simply a determination as to whether a creditor has a colorable claim to property of the estate." *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 32 (1st Cir. 1994) (citations omitted). In addition to case law, the court examined the statutory and procedural schemes and the legislative history of § 362 and concluded that a relief from stay hearing is "merely a summary proceeding of limited effect . . . analogous to a preliminary injunction hearing, requiring a speedy and necessarily cursory determination of the reasonable likelihood that a creditor has a legitimate claim or lien as to a debtor's property." *Id.* at 33. Accordingly, "[i]f a court finds that likelihood to exist, this is not a determination of the validity of those claims, but merely a grant of permission from the court allowing that creditor to litigate its substantive claims elsewhere without violating the automatic stay." *Id.* at 33–34. This Court agrees with the First Circuit's reasoning in *Grella* and with the conclusions of the other courts in this district which have followed it.

Here, Debtor has admitted that Fannie Mae obtained a writ of possession on the Property. This fact alone is sufficient to lead this Court to conclude that a reasonable likelihood exists that Fannie Mae has a legitimate and colorable claim to the Property without making any determination as to whether it was appropriate for the writ of possession to be issued.[3] Accordingly, Fannie Mae has standing under § 362(d) to be granted stay relief and to proceed with adjudication of its rights in state and/or federal district courts.

It would be inappropriate for this Court to ignore the state court writ of possession, particularly on a motion for relief from stay to proceed with state court litigation in which the Debtor can raise all of his state law defenses. The parties are currently litigating against one another in state and federal courts, and they should be permitted to continue that litigation there.

Based upon the pleadings, the arguments of the Parties, and all other matters of record, and for the reasons stated on the record[4] and in this Order, it is hereby

ORDERED that the Motion is GRANTED. The automatic stay is modified so that Fannie Mae may proceed against the Property as authorized under Georgia law, including completion of its state court dispossessory action, subject to any defenses the Debtor may have arising under applicable non-bankruptcy law.

[END OF ORDER]

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[3] Importantly, the court in *Grella* took pains to point out that if the stay is lifted, all that has actually been adjudicated is that the creditor has shown a reasonably likelihood of having a legitimate claim and that this is "not a ruling on the merits of the underlying claim." *Grella*, 42 F.3d 26 at 34. This Court thus makes no findings regarding the validity of Fannie Mae's claim, its deeds, or the writ of possession. No part of this Order should be construed to impair Debtor's right to raise these issues in the state and federal district courts.

[4] Other reasons stated on the record include, but are not limited to, the fact that Debtor's proposed Chapter 13 plan is unconfirmable on its face.